

Application Serial No.: 10/076,522
Reply to Office Action dated October 29, 2003

REMARKS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-17 are presently active in this case, Claims 1-3, 6, 12, and 13 having been amended by way of the present Amendment. Claim 17 has been allowed.

Applicant wishes to draw to the attention of the Examiner that drawings filed on September 15, 2003, were approved. However, the drawings filed on September 15, 2003, were formal drawings and thus the Applicant submits that corrected drawings do not need to be submitted with this reply.

In the outstanding Official Action, Claims 1-10 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Emery (EP 0 189 666) in view of page 19, lines 7-10 of the specification. Claims 11-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Emery in view of page 19, lines 7-10 of the specification and Koike et al. (U.S. Patent No. 5,783,636). For the reasons discussed below, the Applicant requests the withdrawal of the art rejections.

Claims 1-3, 6, 12, and 13 recite an optical fiber cable comprising, among other features, two or more optical fibers and a partitioning spacer housed in a space encircled by a sheath. The space encircled by the sheath is divided into a plurality of partitioned slots by partitioning plate portions, and the respective optical fibers are distributed in the plurality of partitioned slots so that two or more optical fibers are not provided in a single partitioned slot.

The Applicant submits that the Emery reference does not disclose all of the limitations recited in Claim 1 of the present application. For example, the Emery reference does not disclose an optical fiber cable comprising optical fibers that are distributed in a plurality of partitioned slots so that two or more optical fibers are not provided in a single partitioned slot. In fact, the Emery reference does not even disclose or suggest an optical fiber cable comprising optical fibers that are distributed in a plurality of partitioned slots. The Official Action acknowledges on page 3 that the optical fibers (3) (and the tension member 5) of the Emery reference are not distributed in the partitioned slots. The Official Action asserts that the distribution of the optical fibers within the partitioned slot only deal with a rearrangement of parts involving only routine skill in the art.

The Official Action then asserts that the optical fibers (3) are not required to be housed in the tubes (1), thereby implying that the optical fibers could be located at other positions within the cable. (Page 3 of the Official Action, citing page 4, lines 25-30, of the Emery reference.) However, the Applicant submits that the Emery reference only ever discusses the optical fibers as being present in the slots (1). The Applicant respectfully submits that the discussion on page 4, lines 25-30, of the Emery reference is with regard to the electrical conductors (6). This portion of the Emery reference is simply noting that if a tube (1) does not contain an optical fiber (i.e., if a tube is left empty), then the empty tube can be used to store an electrical conductor and that the electrical conductor can be uninsulated (i.e., no insulating sheath is present directly on the electrical conductor), since the electrical conductor will be insulated by the tube. (See also page 2, lines 21-25.) The Emery reference

also notes that an insulated electrical conductor could alternatively be placed in the empty tube (page 4, lines 28-30), although the insulation on this electrical conductor is presumably unnecessary since the tube will insulate the conductor. *Page 4, lines 25-30, does not state or even suggest that if the electrical conductor is placed in a tube (1), then an optical fiber (3) from that tube will be moved to some other location.* This portion of the Emery reference is merely indicating that if a tube is empty, then it can be used to house an electrical conductor. This interpretation is based on the statement that “if there are tubes 1 in the cable not required to house optical fibers, [then] uninsulated copper conductors may extend within such tubes and be insulated thereby.” Thus, the Emery reference does not teach or even suggest an optical fiber cable comprising optical fibers that are distributed in a plurality of partitioned slots, as recited in Claims 1-3, 6, 12, and 13 of the present application.

With regard to the assertion that the present invention is merely a rearrangement of the parts of the Emery reference, the Applicant notes that MPEP 2144.04 VI. C. indicates that the mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims is not by itself sufficient to support a finding of obviousness. The MPEP further indicates that the prior art must provide a motivation or reason for the worker in the art, without the benefit of the Applicant’s specification, to make the necessary changes in the reference device. However, the Applicant submits that the Emery reference teaches away from an optical fiber cable comprising optical fibers that are distributed in a plurality of partitioned slots. The Emery reference describes an optical fiber cable that includes a plastic extrusion that has a plurality of tubes (1) disposed on the ends of elongated members (2),

Application Serial No.: 10/076,522
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where the tubes (1) contain at least one optical fiber (3). The optical fibers (3) are not provided in slots between the elongated members (2), but rather are provided within tubes (1) at the ends of the elongated members (2). The Emery reference states that this configuration eliminates the need for laying plural tubes housing optical fibers around a central member. (See page 1, lines 22-24.) The Emery reference states that the invention described therein eliminates this manufacturing step by providing tubes that are extruded integrally with a central member. Such a configuration is clearly distinguishable from the present invention, and, in fact, teaches away from the claimed present invention.

Thus, the Applicant respectfully submits that one of skill in the art would not have been motivated to rearrange the parts of the cable described in the Emery reference to arrive at the present invention, since such a modification would render the tubes (1) of the Emery reference, which are the main feature of that reference, completely unnecessary. The Applicant further submits that page 19, lines 7-10, of the specification of the present application does not supplement the deficiencies in the teaching of the Emery reference discussed above. Therefore, the Applicant requests the withdrawal of the obviousness rejection of Claims 1-3, 6, 12, and 13.

Claims 4, 5, 11, and 14-16 are considered allowable for the reasons advanced for Claim 1 from which they depend. These claims are further considered allowable as they recite other features of the invention that are neither disclosed, taught, nor suggested by the applied references when those features are considered within the context of Claim 1.

Application Serial No.: 10/076,522
Reply to Office Action dated October 29, 2003

Claims 7-10 are considered allowable for the reasons advanced for Claim 6 from which they depend. These claims are further considered allowable as they recite other features of the invention that are neither disclosed, taught, nor suggested by the applied references when those features are considered within the context of Claim 6.

Consequently, in view of the above discussion, it is respectfully submitted that the present application is in condition for formal allowance and an early and favorable reconsideration of this application is therefore requested.

Respectfully Submitted,

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